

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case No. 04-35634-GFK
Chapter 7

Mark Stern
Melissa Stern,

Debtor(s)

**NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY**

TO: The Debtor(s) and other entities specified in Local Rule 9013-3(a).

1. Ameriquist Mortgage Company moves the Court for relief requested below and gives Notice of Hearing.
2. The Court will hold a Hearing on this motion at 10:30 a.m., on November 15, 2004, in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered no later than November 9, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than November 3, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, or holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on September 29, 2004. The case is now pending in this court.
5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.
6. By mortgage dated February 4, 2004, in the original principal amount of \$155,700.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 312234, Movant acquired a first mortgage's interest in the following real property (the "Property"), to-wit:

Lots 9 and 10 in Block 8, less and except the East 115.5 Feet of Lot 9 and 10 in Block 8 in Stager's Addition to Sauk Rapids, Benton County, Minnesota

The Mortgage was filed in the offices of the Recorder, for Benton County, Minnesota on March 12, 2004, as Document No. 312234. A copy of the Mortgage is attached hereto as Exhibit A.

Debtors have listed in their filed Bankruptcy schedules that their intent is to surrender said property.

7. The last payment received from Debtors was applied to the July, 2004 payment as that was the next payment due. Debtor(s) are delinquent under the terms of the note secured by the Mortgage with respect to monthly payments due as follows:

3 payments @ \$1,283.04	\$3,849.12
3 late charges @ \$56.85	\$170.55
Attorneys Fees & Cost	\$700.00
TOTAL	<hr/> \$4,719.67

The outstanding principal balance due to Movant under the terms of the note is \$155,273.63 as of October 20, 2004, and interest accrues at the rate of 7.95% per diem per day. The amount therefore due and owing on said note is as follows:

Principal Balance	\$155,273.63
Late charges	\$170.55
Escrow advance	\$274.52
Interest	\$3,466.28
Attorneys Fees & Costs	\$700.00
TOTAL	<hr/> \$159,884.98

The fair market value of the Property as averred by the debtor is approximately \$110,000.00.

8. Movant does not have, and has not been offered, adequate protection of its interest in the Property. In view of the fact that this is a Chapter 7 liquidation proceeding, the Property is not necessary for an effective reorganization. Moreover, Debtor(s) failure to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1), entitling Movant to relief from the automatic stay.

9. If testimony is necessary as to any facts relevant to this motion, Nancy A. Nordmeyer, 7300 Metro Boulevard #390, Edina, MN, will testify on behalf of Movant.

10. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

WHEREFORE, Movant, respectfully moves the Court for an Order modifying the automatic stay of Sec. 362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as may be just and equitable.

Dated: 10-26-04

Signed: /s/ NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

VERIFICATION

I, Michael Green, the REPRESENTATIVE SPECIALIST of Ameriquest Mortgage Company, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 10-26-04

Signed: [Signature]

Ameriquest Mortgage Company
505 City Parkway West STE 100
Orange, CA 92868

FIXED RATE NOTE

THIS LOAN HAS A PREPAYMENT PENALTY PROVISION.

February 4, 2004
[Date]

Orange
[City]

CA
[State]

324 6th Street South, Sauk Rapids, MN 56379
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$155,700.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Ameriquest Mortgage Company.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 7.950%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on April 1, 2004.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on March 1, 2034, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at: 505 City Parkway West, Suite 100, Orange, CA 92668
or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payments will be in the amount of U.S. \$1,137.05.

4. PREPAYMENT PRIVILEGE

I may repay all or any part of the principal balance of this Note in accordance with the terms of this Section. A "prepayment" is any amount that I pay in excess of my regularly scheduled payments of principal and interest that the Lender will apply to reduce the outstanding principal balance on this Note in accordance with this Section.

(A) Prepayment Made Three (3.00) year(s) After the Date of this Note

If I make a prepayment commencing on or after the Three (3.00) year anniversary of the date of this Note, I may make that prepayment, in full or in part, without the imposition of a prepayment charge by the Lender.

(B) Prepayment Made Within Three (3.00) year(s) of the Date of this Note

I agree to pay Lender a prepayment charge if I make a prepayment before the Three (3.00) year anniversary of the date of this Note. The prepayment charge will be the lesser of two percent (2%) of the unpaid principal balance or sixty (60) days interest on the unpaid principal balance.

(C) Application of Funds

I agree that when I indicate in writing that I am making a prepayment, the Lender shall apply funds it receives first to pay any prepayment charge and next in accordance with the order of application of payments set forth in Section 2 of the Security Instrument.


(D) Monthly Payments

If I make a prepayment of an amount less than the amount needed to completely repay all amounts due under this Note and the Security Instrument, my regularly scheduled payments of principal and interest will not change as a result.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charges shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

Initials:

 ms

MAIRLYN J. NOVAK
COUNTY RECORDER
BY BW DEPUTY XM

OFFICE OF
BENTON COUNTY RECORDER
BENTON COUNTY, MN
CERTIFIED TO BE FILED
AND/OR RECORDED ON

Registration tax hereon of \$ 358.11 paid
Aud./Treas. Receipt No. 53810

312234

2004 MAR 12 P 12:04

Frank A. Novak
County Aud./Treas.

[Space Above This Line For Recording Data]

MORTGAGE

Return To:

Ameriquet Mortgage Company
P.O. Box 11507,
Santa Ana, CA 92711

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated February 4, 2004 together with all Riders to this document.

0067393504 - 7339

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

VMP-6(MN) (0005)

Page 1 of 16

Initials

MS MS

VMP MORTGAGE FORMS - (800)521-7291

02/04/2004 9:04:29

Nation's Mall
St. Louis Park
2100 CR# 1025059

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-35634-GFK
Chapter 7

Mark Stern
Melissa Stern,

Debtor(s)

MEMORANDUM OF LAW

Ameriquist Mortgage Company ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$4,719.67.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 2 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrty. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$159,884.98. The fair market value of the property is approximately \$110,000.00. Clearly, the Debtor(s) have no equity in the property.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 10.26.21.

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

Signed: /s/ NANCY A. NORDMEYER
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

I, **Stephanie Pilegaard** says that on October 26, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

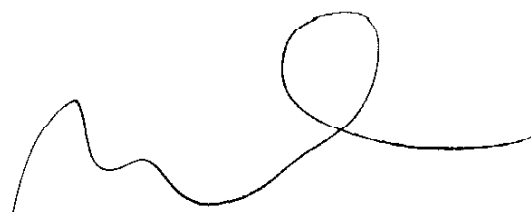
Mark Stern
1281 15th Street NE
Sauk Rapids, MN 56379

Melissa Stern
1281 15th Street NE
Sauk Rapids, MN 56379

Stephen Heller, Esq.
606 25th Ave South STE 110
St. Cloud, MN 56301

Dorraine A. Larison, Trustee
1010 W. St. Germain RM 600
St. Cloud, MN 56301

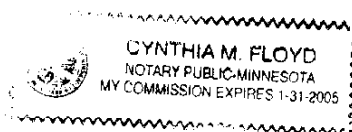
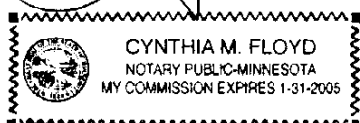
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415



Stephanie Pilegaard

Subscribed and sworn to before me October 26, 2004.

Notary



04-29774
0067393504

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case Number BKY 04-35634-GFK

Mark Stern
Melissa Stern,

Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on November 15, 2004.

THIS CAUSE coming to be heard on the Motion of Ameriquest Mortgage Company, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Ameriquest Mortgage Company, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

Lots 9 and 10 in Block 8, less and except the East 115.5 Feet of Lot 9 and 10 in Block 8 in Stager's Addition to Sauk Rapids, Benton County, Minnesota

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court